MONTANA LEGISLATIVE HISTORY

Chapter 709 19 79

Bill H 775 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 19	✓ C	Hearing Date(s)	Mar 13	✓ C
		C		Apr 05	✓ C
		C			C
		C			C
Date Out	Feb 19	✓ C		Apr 05	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 709

HOUSE BILL NO. 775

INTRODUCED BY SEIFERT, MOORE, FEDA, BENNETT, MARKS, SPILKER

IN THE HOUSE

February 13, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill do pass. Report adopted.
February 21, 1979	Second reading, do pass as amended.
February 22, 1979	Correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Judiciary.
April 5, 1979	Committee recommend bill be concurred in. Report adopted.
April 7, 1979	Motion pass consideration.
April 9, 1979	Second reading, concurred in.
April 11, 1979	Third reading, concurred in.

IN THE HOUSE

April 12, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 775

INTRODUCED BY Faithful Moore Fred Bennett

Merle Speaker

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW ATTORNEYS' FEES TO A PERSON ALLEGED TO HAVE ENGAGED IN A DISCRIMINATORY PRACTICE IF THE COMPLAINT IS DISMISSED; AMENDING SECTION 49-2-507, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 49-2-507, MCA, is amended to read:

"49-2-507. Procedure upon failure to find discrimination -- attorneys' fees. (1) If the commission finds that a person against whom a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

(2) The person against whom the complaint was filed is entitled to recover a reasonable attorneys' fee from the person filing the complaint."

-End-

HB 775
INTRODUCED BILL

RICK SHERWOOD: Staff Attorney for Human Rights Bureau. I am neither a proponent or opponent. This is just a matter of policy. On page 3, line 19 of the definitions, the intent would be more clearly explained if the word marriage were there rather than marital status.

REPRESENTATIVE KEMMIS: This also defines marital status as well as cohabitation.

Mr. Sherwood explained marital status, the meaning as used in the bill. There was discussion about a narrower interpretation of marital status.

REPRESENTATIVE TEAGUE: Why does this conflict with common law. Discussion followed.

There was no further discussion and no other questions and the hearing closed.

HOUSE BILL NO. 775: Representative Seifert. This bill would allow attorneys fees to a person alleged to have engaged in a discriminatory practice if the complaint should be dismissed. The person against whom the complaint was filed is entitled to recover a reasonable attorneys fee from the person filing the complaint.

DEBRA KEHR: We feel that the bill is necessary. She talked of human rights and gave an example of a case she was familiar with.

JIM HUGHES: Mountain Bell. I am sorry that I don't have this in final form. We are in suppo of this. Amend on lines 17, 18 and 19, by inserting another sentence. (Copy attached) The wording in section 2 may be a problem.

FREDERICK SHERWOOD: Montana Human Rights Division. I oppose the bill. I would like to point out the discouraging effect this would have on complaints. One is never completely certain of a case before it goes to court. He discussed how they might lose their complaint and be penalized by this bill. This bill speaks of attorneys fees in general. It does refer to attorneys fees from an present point forward, under this bill that a respondent would be encouraged to hire an attorney as soon as possible even if the initial report is not encouraging. The second point is that it awards attorney fees to the respondent. There are some made in bad faith but it is also true that there are a great many of complaints that are legitimate. This bill is different, the federal provisions for attorneys fees are in conflict. I believe it would be so at odds with the federal philosophy that we may lose our 706 funding. We have an arrangement whereby they will supply us with federal funds from EEOC. The effect of this bill would be to cut the guts out of the Human Rights Bureau.

TOM KEEGAN: This bill is wrong because it is unfair. I am speaking in behalf of myself. It should apply to both. There are nuisance defenses in these cases also. I could just skip the Human Rights Bureau completely and go directly to court. It might be that the fees could already be paid under current law. Make it fair for both sides.

REPRESENTATIVE LORY: Would the commission object to awarding of reasonable attorneys fees to the prevailing party.

MR. SHERWOOD: Since we have not met this month I am not sure what the feeling would be. However I think it would change the effect of the Human Rights Commission in Montana right now. We are merely an administrative agency.

Representative Keedy and Mr. Sherwood discussed the awarding of attorneys fees.

REPRESENTATIVE KEMMIS: There are a number of kinds of statutes that create rights. I am just wondering if you can tell me of any statute that just awards attorneys fees on the other side of the equation. Mr. Hughes answered 23-3-204.

REPRESENTATIVE HOLMES: Is it possible to divide the fees, divide them according to the fault. Discussion.

The hearing closed on House Bill No. 775.

After a brief recess the committee went into executive action on bills pending,

at 10:05 a.m.

John P. Scully, Chairman

Mary Ellen Connelly, Secretary

HOUSE BILL NO. 760: Representative Scully said that he had received information that the bill would cost the Highway Patrol approxiamtely $150,000.

Representative Roth moved "do not pass". Representative Keyser offered a substitute motion of "do pass". Representative Scully suggested that if this bill does pass it would have to be sent to the Appropriations Committee. The motion carried with the vote 18 to 1.

HOUSE BILL NO. 774: Representative Day moved "do not pass". Representative Holmes moved to amend on page 3, line 19, and change "marital status" to "marriage". The motion carried with the vote unanimous.

Representative Seifert moved a substitute motion "do pass". The motion carried.

HOUSE BILL NO. 775: Representative Keedy moved to amend. The motion carried with the vote unanimous. He will do so from the floor. Representative Keyser moved "do pass". The motion carried with Representative Kemmis voting "no".

HOUSE BILL NO. 777: Representative Keyser moved "do not pass". The motion carried with Representatives Keedy, Uhde, and Holmes voting "no".

HOUSE BILL NO.782: Representative Lory moved "do pass". Representative Day moved to amend, to carry the registration within the snowmobile at all times. Representative Keyser spoke in favor of the motion. Representative Conroy opposed the motion and Representative Roth asked for clarification. After a great deal of discussion Representative Day withdrew the motion.

Representative Keyser moved to amend to put a decal on both sides of the cowl. Representative Conroy opposed the motion. There was discussion. Representative Holmes moved to amend on page 8, line 21, "on either side of the cowling". The motion failed.

The motion "do pass" carried with Representative Keedy voting "no".

HOUSE BILL NO. 783: Representative Lory moved "do pass". The motion failed on a roll call vote. The motion "do not pass" carried by reversing the vote. After some discussion Representative Eudaily moved to reconsider the action on this bill. The motion carried with the vote unanimous.

Senator Lensink stated that defining marital status has some far-reaching effects in terms of employment, and other areas other than employment.

There was a comment that Chad Smith wanted to offer some amendments to HB774 and they felt that it was definitely difficult to read.

There being no further questions or comments, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 775:

This is an act to allow attorneys fees to the prevaling party in a contested case hearing under the human rights act, etc. Representative Seifert stated that this might do away with some of the insurance accidents that are filed under the human rights bill.

Chad Smith, representing the Montana School Board's Association, stated that this is an important bill; however, on this bill, they are concerned somewhat about the language and he offered a proposed amendment to this bill. He stated that one important consideration is if a complaint is brought to the human rights commission, it is the human rights commission that takes over and an individual defending against this charge is really defending against the state of Montana. He said that, for the most part, the action is brought by the staff and the staff will generally prosecute the case and the individual can go to considerable expense and he thought the party successfully defending should get his attorneys' fees.

There were no further proponents and no opponents.

Senator Brown questioned if the human rights commission appeared in the house. Representative Seifert said that he did discuss this bill with the human rights commission and the commission is not in a position to award the attorneys' fees. He stated that he believed the amendment might have a bearing on the bill.

Senator Brown questioned if they have any information that indicates how many times the staff proceeds with the case and what amount of money in attorneys' fees would be paid. He stated what you are really talking about is the state paying these attorney fees. Representative Seifert said that he did not but he could look it up.

Senator Lensink said that it was almost implied that a suit is filed simply on a complaint of a party. Mr. Smith stated that yes, that is all it takes. If they accept it, they will use the power of their staff to prosecute it.

Senator Lensink asked if a number of complaints do not come in that they don't accept. Mr. Smith said he would assume they tend to regulate the merits of what is accepted, but once they accept one, then they accept the responsibility for prosecuting for that case. He said they were defending three without validity. He also stated that one case has been pending for five years - he apparently lost interest and was plagued with loss of funds and loss of desire.

CONSIDERATION OF HOUSE BILL 797:

This is an act to clarify who is permitted access to youth court records and related documents, etc. Representative Uhde stated that this bill allows records to be made available to certain people.

Glen Hufstetler, chief probation officer in Kalispell, stated that they support this bill because they feel that the information found in those juvenile records is of benefit to courts and the community at large. He stated that thousands of dollars are spend on evaluation and currently the law does not allow certain individuals to gain access to those records. He stated that after they have been sealed for ten years, then they are destroyed and he said that in most areas, the court is allowing parole officers the opportunity to see those records, but there are a few around the state who will not allow this.

There were no further proponents and no opponents.

Senator Van Valkenburg questioned if this still allows the judge some discretion on opening their files. Mr. Hufstetler stated that it does, that the court order is not automatic..

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 783:

This is an act to provide liens for physicians, nurses, and hospitals for services rendered, etc. Representative

DISPOSITION OF HOUSE BILL 775:

Senator Brown stated that Carl was going to get us some information and Senator Lensink said it depends on if we need the information. Joan Mayer said that this really is a bill on attorneys' fees.

Senator Turnage questioned what does this amendment do and Chad Smith answered that it adds that if an individual is forced to defend against the powers of the state and he prevails, he should be able to collect his attorneys' fees from the state. If the state leans on him and he is wrong, he should have some practical way to collect his attorney's fees.

Senator O'Hara gave an example of a colored family in Great Falls that their children were always in trouble and the father filed charges under the human rights act.

Senator Turnage moved that the amendments offered by Chad Smith be adopted. Senator Lensink stated that he is not going to vote for it in any event as his philosophy is that he does not like to see people sue the government, as he felt that we have it in our power to change the government.

Senator Brown stated that we see a big trend for this and he said that the problem he sees is the disparity of what the state is going to spend and what someone in private practice is going to pay. He said that he felt that this was going to end up costing a lot of bucks. Senator Turnage stated that they would be more circumspect about trying the case. Senator Brown said they can do that already.

A vote was taken on the motion to adopt the amendments and the motion carried with Senator Van Valkenburg voting no.

Senator Turnage moved that the bill be concurred in, as amended. A roll call vote was taken and it was noted that Senator Towe, who was excused, would be allowed to vote on this bill. The vote came out 5 nos and 4 yeses. Senator Towe, when he returned voted yes, which made it a tie vote and the bill will stay in committee.

HOUSE BILL NO. 775

I move to amend the third reading copy of House Bill No. 775 on page 2 by deleting lines 12 through 17 and by inserting in lieu thereof the following:

"(4) The prevailing party is entitled to a reasonable attorney's fee from the other party, and a party successfully defending against a complaint is entitled to a reasonable attorney's fee from the commission, and in either case such parties may bring an action in district court for determination and collection of the attorney's fee."

SENATE COMMITTEE JUDICIARY

Date _____ Bill No. _____ Time _____

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)		✓
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)	✓	
Brown, Steve (D)		✓
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)	✓	

Alice Conway
Secretary

Everett R. Lensink
Chairman

Motion: _____

(include enough information on motion--put with yellow copy of committee report.)

Senator Van Valkenburg moved that this bill be concurred in as amended. The motion carried unanimously.

RECONSIDERATION OF HB 519:

Senator Healy stated that this bill was tabled and he made a motion that this committee remove this bill from the table. (At this point, Senators Towe and Turnage came in.) Senator Turnage stated that this bill came out of Silver Bow County and the question is whether we want to give away a great deal of highway funds. He said that if you get a district court that might abuse these fees, it could be a big problem. A vote was taken and there were four yeses and four nos. (See roll call vote.)

DISPOSITION OF HOUSE BILL 775:

Senator Turnage said that he had a request from Representative Seifert.

Senator Van Valkenburg moved that the amendments be stripped from this bill. The motion carried unanimously.

Senator Turnage moved that t his bill be concurred in. The motion carried unanimously.

There being no further business, the meeting was adjourned.

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

STANDING COMMITTEE REPORT

April 5, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 775

Selfert (Turnage)

Respectfully report as follows: That House Bill No. 775

Be concurred in.

~~DO PASS~~

Everett R. Lensink Chairman.

STATE PUB. CO.

HOUSE BILL NO. 775

INTRODUCED BY SEIFERT, MOORE, FEDA, BENNETT, MARKS, SPILKER

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW ATTORNEYS' FEES TO ~~A PERSON ALLEGED TO HAVE ENGAGED IN A DISCRIMINATORY PRACTICE IF THE COMPLAINT IS DISMISSED; AMENDING SECTION 49-2-507, MCA~~ THE PREVAILING PARTY IN A CONTESTED CASE HEARING UNDER THE HUMAN RIGHTS ACT; AMENDING SECTION 49-2-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

SECTION 1. SECTION 49-2-505, MCA, IS AMENDED TO READ:

"49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, employer, business, corporation, or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The hearing shall be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, employer, business, corporation, organization, agency, or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter, except as permitted under 49-2-508, shall be held in accordance with the Montana Administrative Procedure Act.

(3) The commission may make provision for defraying the expenses of any indigent party in a contested hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorneys' fees. The court in its discretion may allow the prevailing party reasonable attorneys' fees. An action under this section must comply with the Montana Rules of Civil Procedure."

-End-

REFERENCE BILL